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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,795	06/23/2003	Morris Samelson	P-5435(DIV2)	7990
30553	7590	08/18/2004	EXAMINER	
GUNN, LEE & HANOR 700 N. ST. MARY'S STREET SUITE 1500 SAN ANTONIO, TX 78205			CHANNAVAJJALA, LAKSHMI SARADA	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/601,795	Applicant(s) SAMELSON ET AL.	
	Examiner Lakshmi S Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/05/03 & 04/30/04</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-20 are pending.

Instant claims are directed to a method of manufacturing cosmetic compositions comprising the mixing of cosmetic preparation precursors during consecutive heating and cooling cycles, wherein the precursors comprise at least 50% processed Dead Sea mineral particles, having a mesh size of less than 10 mesh.

The terminal disclaimer filed by applicants has been accepted and accordingly, the double patent rejection of record has been withdrawn.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

1. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Instant claims 2 states the limitation "wherein said cosmetic preparation precursors comprise at least 50% processed Dead Sea minerals", which is already present in claim 1 from which it is dependent upon.
2. A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

Examiner notes that claim 13-16 independently recite a specific essential oil. However, in order to be consistent with a proper format of presenting claims, each of claims 13-15 should be

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dependent from claim 12, but not on the preceding claims. For examination purposes, it is assumed that claims 13-16 are dependent upon claim 12.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by US 6,458,388 to Genis et al (Genis).

Genis discloses cosmetic scrub composition comprising Dead Sea salt granules, having a particle size of 0.1-0.3 mm, which is less than the claimed size (col. 2, lines 28-60). With respect to subjecting the precursors to consecutive heating and cooling cycles as claimed, Genis discloses the steps of mixing Dead Sea salt with an emulsifier at a temperature higher than room temperature, homogenizing the mixture and cooling; and subjecting the mixture to another heating and cooling cycle (col. 3, lines 40-60). Instant claim 1 recites at least 50% of the processed Dead Sea mineral particles, which is interpreted as out of the total amount of Dead Sea minerals in the cosmetic composition, at least 50% of the minerals are processed and in the form of particles, based on the disclosure that processing ensures less than 10 mesh (instant specification page 14, lines 4-6). Genis discloses, as explained above, a particle size of less than 0.1 mm size. While Genis fails to explicitly state “processed” or the claimed mesh size (of claims 16 and 18), the particles of Genis have the same size as claimed and hence meet the “processed”

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and the mesh size limitations. With respect to the limitation that the particles do not rapidly settle out of carrier medium, Genis discloses Dead Sea particles of same particle size and in a cosmetic medium containing vitamin E, which is also described in the instant specification (page 19).

Accordingly, the property of not settling out of carrier medium is inherent to the composition of Genis. Instant claims recite at least 50% processed, but does not state if 50% is pertaining to the concentration of Dead Sea salts in the composition. Genus discloses Dead Sea salts in the composition in an amount of 5 to 40 parts (col. 3). Accordingly, Genis anticipates instant claims.

Claim Rejections - 35 USC § 103

4. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,458,388 to Genis et al (Genis).

Genis fails to teach the exact claimed temperatures for heating, cooling, cooling the process vessel after heating step to the claimed temperature and the rate of cooling as claimed. However, Genis teaches the general process of subjecting the components (precursors) of the cosmetic composition containing Dead Sea salts. In particular, Genis teaches heating at a temperature of 10-20 degrees C (approximately between 75 to 80 degrees C) higher than room temperature (which ranges between 18 to 32 C) and cooling to slowly to a temperature of 45 degrees C (col. 4, lines 4-14). Instant claims recite heating to 65 degrees C and cooling to 42 degrees C, which is not significantly different from the temperatures taught by Genis.

Accordingly, it would have been obvious to one of an ordinary skill in the art at the time of the instant invention to optimize the temperature range or exact temperatures of heating and cooling

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cycles, such that a homogenized cream containing Dead Sea salt granules, which is stable upon storage and which does not disappear (col. 5, lines 40-55).

5. Claims 12, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,458,388 to Genis et al (Genis) in view of EP 1074245 (EP '245).

Genis teaches cosmetic compositions containing Dead Sea salts and oily compositions containing the same. However, Genis fails to teach the specific essential oils of instant claims.

EP '245 teaches cosmetic composition containing Dead Sea mineral salts that are granular in nature, for the treatment of skin itching caused by Psoriasis or for skin exfoliating or scrubbing. The composition of EP '245 contains 5% Dead Sea salts and other herbs and the instant claimed aromatic essences such as lavender, chamomile, calendula etc., for skin relaxing or other therapeutic effects (Table on page 9 continued on page 10). EP '245 also teaches emollients and waxes such as vegetable oils, lipo wax etc (page 5, paragraph 0053; table on page 6, and page 4, paragraph 0043). Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include cosmetic aroma agents such as chamomile, lavender and calendula in the cosmetic composition of Genis, containing Dead sea salts because EP '245 suggests that the composition contains granular Dead Sea mineral salts in an amount sufficient to improve properties of the cosmetic and cleansing composition (Paragraphs 0019, 0020 & 1:10 ratio, Para 0059), to provide smoothness, decrease lumpiness, itchiness or edema of the skin and that the aroma agents help in protecting skin from damage due to itching, flaking, eczema etc., impart a pleasant and tactile feeling (emollients); improve circulation and relaxation (herbs and aroma agents). Further, The process of preparing the

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composition (page 7) of EP '245 involves a homogenous mixing, which is the same as instant, because instant application also describes the use of ultra fine Dead Sea salts for a homogenous mixing so as to maintain uniformity of the solid suspension. Instant application also describes the same application of Dead Sea salts as that of EP '245. Thus, the expected result is to achieve an effective treatment for reducing itching and increasing smoothness of skin with Dead Sea salts and improved relaxation with the aromatic agents.

6. Claims 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,458,388 to Genis et al (Genis) and EP 1074245 (EP '245) in view of US 5,997,889 to Durr et al ('889).

Genis fails to teach the specific oil carriers of the instant claims. EP '245, discussed above, teaches emollients and waxes such as vegetable oils, lipo wax etc (page 5, paragraph 0053; table on page 6, and page 4, paragraph 0043) in the preparation of cosmetic compositions containing Dead Sea salts. However, EP '245 does not teach the specific oils claimed.

'889 teaches hand and body cream for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for moisturizing and conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). Further, '889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), as essential oils for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the emollients such as jojoba oil, waxes and fragrances/essential oils of '889 in the composition of Genis containing Dead sea salts and emollients (of EP '245) because '889 teaches the ingredients

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for moisturizing and providing relief to psoriatic or itchy skin conditions and EP '245 also desires a skin composition containing Dead Sea salts and emollients for treating psoriasis or itchy skin. Therefore, a skilled artisan would have expected to achieve a more effective composition for treating psoriasis with a composition containing Dead Sea salts, emollients such as jojoba oils etc. While none of the above references particularly teach the claimed oils i.e., coconut oil, Palm oil, olive, soybean oil etc., '889 suggest incorporating oils in general for providing skin conditioning benefits and provide relief from eczema, dermatitis, psoriasis etc. Accordingly, absent showing criticality it would have been within the scope of a skilled artisan to choose an appropriate oil in the composition of Genis containing Dead Sea salts so as to provide the desired emolliency.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
August 17, 2004